

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC.

Defendants.

BLUE SPIKE, LLC,

Plaintiff,

V.

AUDIBLE MAGIC CORPORATION,
ET AL.

Defendants.

Civil Action No. 6:12-CV-499-LED

(LEAD CASE)

JURY TRIAL DEMANDED

Civil Action No. 6:12-CV-576-LED

(CONSOLIDATED WITH 6:12-CV-499)

JURY TRIAL DEMANDED

**DECLARATION OF JANNA K. FISCHER IN SUPPORT OF FACEBOOK'S
MOTION TO SEVER PURSUANT TO 35 U.S.C. § 299 AND TRANSFER VENUE
PURSUANT TO 28 U.S.C. § 1404(a)**

I, Janna K. Fischer, hereby declare:

1. I am an associate at Cooley LLP, attorneys of record for Defendant Facebook, Inc. I provide this declaration in support of Facebook's motion to sever the case against Facebook's Technology and transfer the severed action to the United States District Court for the Northern District of California. I declare that the following statements are true to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances. If called upon to testify, I could and would competently testify thereto.

2. On April 17, 2014, counsel for Facebook contacted Blue Spike to request clarification on whether Blue Spike dropped its claims against Facebook's Technology.

3. Attached hereto as **Exhibit A** is a true and correct copy of an April 17, 2014 email from Cooley associate Sara J. Radke (now Bradford) to counsel for Blue Spike.

4. Following a meet and confer on April 22, 2014, counsel for Blue Spike responded that it had "distinct claims against entirely separate products" pending against Facebook. Blue Spike did not respond to Facebook's suggestion that it propose a remedy if it intended to pursue the claims against Facebook's Technology that it had dropped.

5. Attached hereto as **Exhibit B** is a true and correct copy of an April 25, 2014 letter from Blue Spike counsel Kirk Anderson to Sara J. Radke (now Bradford).

6. Counsel for Facebook met and conferred with counsel for Blue Spike on May 14, 2014, regarding Blue Spike's complaints. During this meeting, Blue Spike attorney Randall Garteiser agreed that its claims against Facebook's Technology should be tried separately from its claims against Audible Magic's Technology. Blue Spike rejected Facebook's suggestion that Blue Spike file a separate complaint against Facebook's Technology.

7. Attached hereto as **Exhibit C** is a true and correct copy of a May 23, 2014 email from Randall Garteiser to Janna Fischer. Blue Spike indicated in this email that it would not oppose separate trials.

8. Attached hereto as **Exhibit D** is a true and correct copy of a May 28, 2014 email from Randall Garteiser to Janna Fischer in which Blue Spike states that it considers the issue of separate trials premature and refuses to file a stipulation now for separate trials.

9. Counsel for Facebook and Blue Spike again met and conferred on May 29, 2014. Counsel for Blue Spike again refused to file a formal stipulation and said Blue Spike considered the motion premature.

10. Attached hereto as **Exhibit E** is a true and correct copy of the chart of cited prior art, Exhibit C to Defendants' Invalidity Contentions.

11. Defendants list Patent No. 6,119,124 in their Invalidity Contentions. Ex. E at C-1.

12. Attached hereto as **Exhibit F** is a true and correct copy of the face page of U.S. Patent No. 6,119, 124, listing Mark Manasse as an inventor.

13. I spoke with Manasse on May 16, 2014.

14. Manasse now works for Microsoft Research in Mountain View, California. He lives and works in San Francisco. He also soon will have cancer surgery, and his doctors are located in San Francisco. He said that he would be inconvenienced by travel to Texas for trial and would be unwilling to testify in Texas unless required to do so.

15. Defendants also "list Blobworld: A System for Region-Based Image Indexing and Retrieval" in their Invalidity Contentions. Ex. E at C-3.

16. Attached hereto as **Exhibit G** is a true and correct copy of the first page of "Blobworld" showing Chad Carson as an author.

17. I spoke with Carson on June 11, 2014.

18. Carson is the founder of Pepperdata, a startup located in Sunnyvale, California. Pepperdata has only twelve employees. Carson said that "every hour is precious" when one is trying to run such a small and new company. He said he would be quite inconvenienced by travel to Texas for trial.

19. On June 9, 2014, I spoke with Matthew Turk, a facial-recognition technologist whom Facebook plans to retain as an expert witness, who identified several experts in facial recognition technology, all located in California. They are David Kriegman at the University of California, San Diego; Allen Yang at the University of California, Berkeley; and Ming-Hsuan Yang at the University of California, Merced.

20. Attached hereto as **Exhibit H** is a true and correct copy of Facebook's Initial Disclosures.

21. Attached hereto as **Exhibit I** is a true and correct copy of the annual report for Blue Spike, Inc., signed by Scott Moskowitz, in which he gives his address as Sunny Isles Beach, Florida. This annual report was obtained from the Florida Secretary of State's website.

22. Attached hereto as **Exhibit J** is a true and correct copy of Blue Spike's Initial Disclosures.

23. Attached hereto as **Exhibit K** is a true and correct copy of the attorney listings for Richard Neifeld and Bruce Margulies from the website of Neifeld IP Law, P.C., located in Alexandria, Virginia.

24. Attached hereto as **Exhibit L** is a true and correct copy of the attorney listing for Floyd B. Chapman from the website of Wiley Rein LLP, which has offices in Washington, D.C.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed in San Francisco, California, on this 26th day of June, 2014.

s/ Janna K. Fischer
Janna K. Fischer